SHRI M.S. GURUPADASWAMY: You did not commit yourself on that day: anyway, I only wish that you had kept this matter open for a decision. Mr. Jagesh Desai has come to your rescue that your mind is still open.

SHRI HANS RAJ BHARDWAJ: I assure you it is much more open than anybody else's.

SHRI M.S. GURUPADASWAMY: Finally, my amendment is very simple. I want to convert this article 263 and make it mandatory. It is not mandatory as it is. I want to say that because we have waited for 38 years for this article to operate; it has not operated; it is in disuse, so to say. Therefore, I have said in my amendment that the President "shall" appoint Inter-State Council immediately because there is an imperative necessity for such a body to ensure smooth and harmonious working of this dual polity of ours. Thank you.

THE VICE-CHAIRMAN (SHRI ANAND SHARMA): Shri Gurupadaswamy, are you withdrawing the Bill or I put it to vote?

SHRI M.S. GURUPADASWAMY: Put it to vote.

SHRI PAWAN KUMAR BANSAL (Punjab): This is a Constitutional amendment and 50 per cent of the people have to be present in House.

THE VICE-CHAIRMAN (SHRI ANAND SHARMA): We will go by voice vote.

SHRI M.S. GURUPADASWAMY: Yes, voice vote only; I do not demand a division.

THE VICE-CHAIRMAN (SHRl ANAND SHARMA): The question is:

> "That the Bill further to amend the Constitution of India, be taken into consideration."

The motion was negatived.

CONSTITUTION (AMENDMENT) BILL,1988 (TO AMEND THE TENTHSCHEDULE)

SHRI PAWAN KUMAR BANSAL (Punjab): Mr. Vice-Chairman, I beg to move:

> "That the Bill further to amend the Constitution of India, be taken into consideration."

Sir, to rid our body politic of the scourge of defections, one of the very first bold steps that the Government under Shri Rajiv Gandhi took was to enact the anti-defection law in the form of the Fifty-second Amendment to the Constitution. This question of defections had defied solution and no corrective measures could be taken ever since the Fourth General Elections held in 1967 when the phenomenon of defections began to eat at the very vitals of our democracy.

As the time passed, the problem became increasingly acute. Following the Fourth General Elections, if the figures I have are correct, as many as 500 elected Members in different Houses crossed the floor and as many as 118 of them changed their loyalty from one party to another to become Ministers or Ministers of State. Elected Members crossed the floor with no compunction whatsoever for personal gains. When people with no similarity of views or common approach to poutical issues started deserting their parties motivated only by narrow political considerations, the obvious casualty was democracy itself. We faced a situation and found ourselves in a scenario where a

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candidate at the elections would claim to be a repository of virtue fully deserving the faith and confidence of the electorate, but once elected, he would arrogate to himself the licence to indulge in any form of political harlotry. This became a cause of serious concern to every right-thinking person in the country.

The Congress Government Constituted a highpowered Committee headed by the late Shri Y.B. Chavan and with very eminent jurists as its members to study the problem and to suggest means to overcome it. A Bill was subsequently introduced in 1973 but it lapsed. Another one prepared by the Janata Government could never be introduced in Parliament because they could never agree on any matter of relevance.

Sir, the war against defections could not be launched because, apparently, many difficulties came in the way like the very definition of a political party and the term 'defection' itself. It, however, required the political will of Shri Rajiv Gandhi to take a major initiative in fighting this menace and the world applauded when defections were banned in this country under the Fifty-second Amendment whereby Schedule 10 was added to the Constitution. When these provisions were being discussed, one school of thought advocated that in addition to voluntary defections from one political party to another leading to forfeiture of Membership of the House, even explusion from a party should incur such a disqualification. This was opposed--and I say, rightly opposed—on the ground that the vesting of such a power in the party leadership could lead to brazen misuse and abuse thereof. And mere whims of those in control of the party machinery could result in stripping a member of the status conferred on him by the electorate. A true democrat, Shri Rajiv Gandhi was influenced by this view. Accordingly, clause 2(1) (c) of the Bill which postulated that a member should lose his membership if he was removed from the party was deleted from the Bill and it was provided that only voluntary defection would incur such a disqualification from the Parliament or the State Legislature, as the case may be. Splits in a party with one-third of the total membership leaving it or merger of two or more parties, howsoever big or small, were also kept out of the purview of the term "defection".

Sir, as we know, this measure was adopted unanimously in the two Houses to preserve the best democratic traditions and norms and to work for a clean public life where a legislator did not look upon his membership as a means to self-aggrandisement or to strike bargains for narrow poutical ends, but took it as a sacred duty to be discharged in the best interests of his constituents and the country.

As a first step, this revolutionary but much wanted law was enacted despite some shortcomings which, as the Prime Minister then said, "we would try to overcome as we see and indentify those"

This law has gone a .long way in bringing about the much desired disciplinary effect on our elected representatives and some check on "Aya Rams" and "Gaya Rams". We do not today witness that political horse-trading which had threatened to blow up our very system a few years back.

However, Sir, experience has pointed out a major drawback in the anti-defection provisions of the Constitution which need immediate attention and rectification in order to avoid the provisions being circumvented by some people for whom morality is alien in politics. There have been instances where a member of a House on failing apart from a political party to which he belonged associated himself actively with some other party to work and right against the former, but did not formally give up the membership

of that party and even obeyed its whip in the House lest he should lose the membership of the House. Sir, in order to explain this point as clearly as it is possible for me, I will have to refer to some specifics with due deference to all concerned.

In the last elections, Sir, the Congress was returned to power with a massive and unprecedented majority. This obviously was not to the liking of many powers hostile to us. And so began the destabilisation game. Mendacious allegations were levelled against the leadership and major controversies were sought to be raised in a vain effort to spread disaffection against the Government so that at some opportune time, the fall of the duly elected government could be engineered and in its place a pliable government could be installed.

During those challenging days, the vast and preponderant majority of the Congress Members of Parliament and the workers all over the country stood behind its leader, Shri Rajiv Gandhi, like a rock. A very few, however, whom one could count on one's fingers, led by a former Minister who, in the past, missed no opportunity to declare his unwavering a unflincing loyalty to the leader, chose to tread a different path—not because of any difference in ideology but for reasons of misplaced and highly inflated personal ambition. Fired by the zeal to embarrass the party and the leadership, they started a vituperative campaign against the Government and the leader, Shri Rajiv Gandhi. These disciple-turned-critics started hobnobbing with the Opposition and *vied with the other* parties to denigrate the Congress leadership and iu bring about a fall of the Government. It was not dissent but a conspiracy against ones own party* against one s own leader, against one's own country. The perpetrators thereof, however, strove to stand on a high moral platform, pointing an accusing finger at the unquestioned leader of the country, Prime Minister Shri Rajiv Gandhi, who had taken on the mantle of Prime Ministership at a very critical juncture in our history.

Sir, to differ and to part ways is the basic right of an individual in a free society. So is the right of poutical dissent in a democracy. But it is also imperative that the representatives of the people demonstrate a firm commitment to value-based politics. In this light I do not find fault with some Members drifting away from the Congress, but what does cause me some concern is that in total contradiction to their moral protestations, they threw to the winds all the democratic norms. They claimed that they were fighting corruption, and formed a Jan Morena for the purpose. As I said a little earlier, Sir, they dissociated themselves* from the Congress and, instead, came to form an association with other opposition parties and attended various joint meetings with them, breaking all emotional connections with the Congress and demanding resignation of the Government. Yet, they betrayed hypocrisy when they chose to remain Members of the Congress Parliamentary Party and also subitted to its whips, least they lose their membership of Parliament. The least that was expected of these self-proclaiming paragons of virtue was to resign from the Congress, to give up their seats in Parliament and to go to the people again to seek a fresh mandate. But, lacking that moral courage, they decided to stick on, thus defeating the basic ideals behind the enactment of a law to check political prostitution and to infuse high moral values in our political behaviour.

Sir, for the last many months they have persisted obdurately with their conduct. They have joined a new party called Janata Dal which, in turn, is a constituent of the National Front, working desperately to seize power in the country. Thus, in reality, they have voluntarily given up the membership of the party and should have, therefore, attracted the provisions

[Shri Pawan Kumar Bansal] of para 2(l)(a) of the Tenth Schedule. But in order to avoid losing their seats, they refuse to acknowledge this fact and continue to behave in such a manner that they do not attract the provisions of para 2(1)(b) of the Tenth Schedule of the Constitution, becasue, if not emotionally, at least, perforce, they are following the mandate of the party, they vote, they ensure that they are present in the House, and for no reason they are absent when there is a motion or a Bill calling for a division in the House.

Sir, it is under these circumstances that I have moved this Bill which in a way seeks to offer a sort of explanation to the existing two provisions of paragraph 2 of the Tenth Schedule dealing with disqualification on ground of defection. Sir, I want an amendment to the effect that another sub-para, sub-para (c), should be inserted therein to read that if a Member participates in a meeting convened by any other political party to make common cause with that party, opposing the political party to which he belongs or otherwise acts in a manner which demonstrates severance of association with his party, he should also incur the disqualification provided for in the Constitution.

However, Sir, while I recognise that there is need to plug the loopholes that admit circumvention of the anti-defection measures and expose to contempt sound constituional and moral tenets it is also, I emphasise, necessary to safeguard scrupulously the right of a Member to express and propagate any view different from the general view of the political party to which he belongs. And to provide for a safeguard in case a Member expresses an opinion different from the known opinion of the party, I have pleaded for introduction of a proviso to sub-para (2) in the following words:

"Provided that an opinion expressed by him, which may be different from, or at variance with, the known or expressed ideology or policy of the political party to which he belongs, shall not be construed as opposing his party or severing association with his party."

Sir, keeping in view the purpose that a provision like that would serve, I would obviously solicit support of all sections of public opinion and from Members from both the sides of this House. However, Sir, I know that when I seek such a response from the Members on the other side, I am asking for something quite impossible from them. This I say because the recent events that have taken place have rather disappointed me.

"When the Fiftysecond amendment to the constitution was passed, you would recollect, it got a unanimous approval from all sections, from all poutical parties, in Parliament. But very soon, going back on that, the provisions were challenged. Today an hon. former Member, who was not present in the House at the time when these matters were taken up for discussion, has said that the Janata Dal would challenge the provisions of the Tenth Schedule to the Constitution as being provisions which tantamount to denying the legitimate right of the freedom of expression to a Member of Parliament. He is a senior learned member of the legal fraternity at the moment practising at the Bar. This is not the forum for me to join issue with him on the legal provisions, but it is absolutely important to submit that the Fiftysecond amendment to the Constitution also introduced an amendment to Article 102 of the Constitution, whereby Clause 2 was inserted to provide that a person shall be disqualified for being a Member of either House of Parliament, if he is so disqualified under the Tenth Schedule. Now, to fall back upon Article 105, which clearly says that a Member of Parliament shall have the right of freedom of speech in Parliament, but subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament, would not be only misplaced, but, permit me to say that the resort to these provisions at this juncture would be dishonest. We

have come to know that after declining to honour the spirit of the Anti-Defection law, one hon. Member of the other House, who has been a senior Minister earlier, has now written to the[1] Speaker saying that though he was elected as an independent candidate, he belongs to the Janata Dal and has asked the Speaker to take whatever appropriate action the Speaker may want to take. This action is exhibition of double standards. If the hon. Member had any respect for the Constitutional provisions, the best course for him was to resign his seat and to go to the electorate again to tell them: I have thought it fit to resign because you gave me the mandate as an independent candidate. Today .....

श्री वीरेन्द्र वर्मा (उत्तर प्रदेश): उस हाउस के ...

श्री पवन कुमार बंसल: मैं हाउस की बात नहीं करता लीगल प्रोविजन की जो सिग्निट है उसकी बात करता हूं। वर्मा साहब, अगर आपने समझने की कोशिश की हो तो।

THE MINISTER OF STATE IN THE MINISTRY OF HEALTH AND FAMILY WELFARE (KUMARI SAROJ KHAPARDE): For that he has to resign from his seat.

SHRI PAWAN KUMAR BANSAL: He should have reisgned, which he did not choose to do. Instead he seemingly makes a very clever move. He Knows that the real course to be adopted in this case is disqualification. But, Sir, he wants to throw the institution of the Speaker, the institution of Parliament to some sort of doubt in the minds of the unwary people and become a martyr himself saying that he has been disqualified from the House and if he is not disqualified he wants recognition of the Janata Dal this way He. has failed to win over people of the Janata Party to his fold. He knows that a few people who left the Congress with him are now not supporting his actions. Finding himself in that dilemma he has very—I would not like to use a word which may sound harsh at the moment— but I would say that he has really exercised his mental faculties to obviate, to violate the provisions of the Constitution. Sir, the provisions of the Constitution as these stand now are quite clear and unambiguous about the point. A person has the liberty to go to any other party and an independent person is also bound by those provisions. We discussed it in detail earlier. It is not that the provisions are not applicable to an independent Member. An nominated Member has been given some period to decide to which. . . there is a provision whereby a certain period is provided to the nominated Member alone to take a decision whether he wants to remain an independent or wants to join a particular political party. But an independent Member has no such option. Once he is elected as an independent Member by the electorate, it was presumed by the collective will of the two Houses of Parliament when they enacted these provisions that he would remain as an independent and discharge his functions as an independent and if he chooses to join a political party or form a new political party with other party people and wants recognition of the political party, he must give up his Membership. Now, the hon. Member does not want to do that because quite contrary to his prostestation, power is dear to him, quite contrary to his proclamations he would want to attain power by whatever means he can. Today, Sir, after having turned a blind eye to the provisions of the Constitution for so many months, he has chosen to write to the Speaker invoking this provision. Knowing very well that either way he stands to gain. That is what we do not expect....

DR. G. VDAYA MOHAN REDDY (Andhra Pradesh): You please explain how he will gain?

SHRI PAWAN KUMAR BANSAL: I have explained that just now. ...*{Interruptions)*... If my hon. friend on the other side has not understood it, I would like to repeat that, Sir. He has failed to take the flock with him. He has failed to

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infuse confidence in the people when he thought he would be able to win over by various sorts of tactics. He has failed to get recognition for the Janata Dal from his own men and today he wants that recognition from the Speaker of the Lok Sabha and in case the Speaker were to act—as I feel he should act—to disqualify him from the Membership of the House, he would not rest there. A charade would be created, a campaign would be launched that a person like Mr V.P. Singh-1 want to name him now, sir, -has been disqualified only only for championing...

SHRI MOTURU HANUMANTHA RAO (Andhra Pradesh): The speaker is entitled to have his own decision about it. Why are you mentioning that here? According to the provisions of the constitution, the Speaker can act on that Why a Resoution is to be removed here?

THE VICE-CHAIRMAN (SHRI ANAND SHARMA): It is in defferent context he is trying to explain what he has in his mind about the Bill which he bas moved. I do not find anything abjectionable.

SHRI PAWAN KUMAR BANSAL: There is a very clever and cunning move in moving that application before the Speaker.

5 P.M

The only remedy available to him, the only clear path available to the hon. Member was to resign from Parliament and Sir, you can....

THE VICE-CHAIRMAN (SHRI ANAND SHARMA): The time is up. You can continue later.

SHRI PAWAN KUMAR BANSAL. Right Sir,

[The Vice-Chairman (Shri Jagesh Desai in the Chair)]

SHORT DURATION DISCUSSION

Functioning or Government Hospitals in Delhi — (Cdntd.)

SHRI P. K KUNJACHEN: Sir, in the morning, I expressed my views in respect of the grievances of the doctors, the hosue surgeons, the nurses and other staff of the hospitals in Delhi. I have sympathy with them and I support then-genuine demands. But at the same time, I want to point out that there are some people among them who are very corrupt, bureaucratic, autocratic and they are behaving in a very bad way. That shouid be taken care of and serious action should be taken against them. Due to paucity of time, I do not want to explain that but you can see from the headings of the newspapers, "New born oaby exchanged," that is one heading, lt appeared last year. Then, "Hospitals turn out patients". That is another heading. Another heading is, "Hospital delay caused the student's death", "Neglect cause of miscarriage". In this way, continuous reports, one after another, have appeared in many other newspapers. These are all due to the negligence of the doctors. They have got much work. They are serving under different conditions and I accept that. But at the same time, this has to be stopped. Additional staff has to be posted but at the same time, this kind of an activity should be stopped. Another thing is, a large number of doctors receive bribes. Unless they get money, they will not admit a patient. They will not treat him and if an operation has to be done, money has to be given in advance. This practice has to be put an end to. So, while on the one hand we sympathise with the demands of the doctors, house surgeons, nurses and others and we request the government to consider their demands, on the other hand, we will have to take stern action against the erring doctors, house surgeons, nurses and other staff and against the corrupt and autocratic persons.